

Written Testimony IN SUPPORT of
Universal Deportation Defense for Montgomery County Residents
In the FY 2021 Recommended Operating Budget

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By now, the council is well aware of the dangerous and inhumane policies of the Trump Administration, such as ramping up detention and enforcement not only at the border, but in our communities as well, the imposition of quotas on judges, detention of pregnant women and children, aggressive border policies that separate families, and, most recently, **refusal to release vulnerable individuals from civil immigration custody and the wholesale expulsion of thousands of individuals seeking protection, including asylum seekers and unaccompanied children, during the COVID-19 crisis.** These policies reflect a mean-spiritedness and a disregard for following the requirements of U.S. immigration law that now permeates every aspect of immigration enforcement, especially detained immigration practice.

For the past 16 years, the immigration clinic has practiced in the Baltimore Immigration Court, the court with jurisdiction over Montgomery County residents. The work of the clinic brings us into contact with all of the local immigration government bodies with jurisdiction over Montgomery County residents, including the Baltimore Immigration Court, Baltimore ICE, the Baltimore Office of Chief Counsel, and U.S. Citizenship and Immigration Services, which handles immigration petitions and applications. The Clinic has represented many detained people and has therefore had a lot of contact with the local Maryland jails that house ICE detainees in Frederick, Howard, and Worcester counties.

Since Mr. Trump took office, all of these immigration agencies, **especially those related to detained individuals**, deal more harshly with immigrants than ever before.

ICE is arresting and detaining more people. The Baltimore ICE office once applied its discretion to determine who it would detain and who could safely stay in the community. ICE agents once took into consideration the age, health, and well-being of the individual subject to detention, as well as their ties to the community and possible claims to relief from deportation. Since Trump, ICE has flatly refused to exercise any of its discretion. This has resulted in the detention of elderly men and women with chronic health conditions, including diabetes, HIV, heart problems, and mental and physical disabilities. The clinic recently filed conditional parole release requests with ICE Enforcement and Removal Operations ("ERO") requesting the release of detained individuals at high risk of infection and death due to COVID-19. All four requests were denied almost immediately. At least two of those denied requests are currently named plaintiffs in a federal lawsuit.

ICE is now routinely denying bond to detainees. When detainees appeal that refusal to grant bond to an immigration judge at the Baltimore Immigration Court, the judge now grants fewer postponements and sets much higher bond amounts than she used to. A study of the Baltimore Immigration bond court, *Presumed Dangerous: Bond, Representation, and Detention*, revealed that in the six months following this president's inauguration, the average bond amount increased by 38% rising from an average of \$8,597 in the first three months of the observations to \$11,868 in the last two months; the data also reveal that the average rate of granting bond dropped by 7% from bond granted in 73% of cases to bond granted in 66% of cases¹. Unlike in criminal court, where only a percentage needs to be paid, ICE detainees have to pay the full amount to secure release.

People who are not detained are four times more likely to win the right to remain with their families in the United States². The advantages of a successful bond hearing cannot be overstated. If the detained immigrant is granted a reasonable bond and released, the immigrant's case is transferred to a less expedited docket with more generous scheduling that facilitates both retention of counsel and case preparation. This new time frame gives the immigrant the necessary time to work, save money, and hire an attorney to handle the immigration case. Because the immigrant is free, the immigrant can assist their attorney with case preparation, including collecting essential documentary evidence and contacting potential witnesses. **If the immigrant remains detained (for reasons that include being ineligible for bond, denied bond by the judge, or having bond set too high for the family to pay), the immigrant's case typically results in an order of deportation, usually within 6 months of the immigrant's initial arrest and detention.**

A detained client is a far less effective witness than a non-detained one. Much of the success of a client's merits case depends on a finding that his/her testimony is credible. Detention is a physically and emotionally stressful and traumatic experience. Detainees are often housed with the general criminal inmate population for many months in county jails that were originally designed for short stays of no more than days or a couple of weeks. In Maryland, ICE holds detainees within the county jails of Frederick, Worcester, and Howard Counties. The largest facility is at the Worcester County Jail, where the majority of ICE detainees are held, hours away from their families and most lawyers' offices. For many, this is the first time they have ever been detained. The stress of detention often affects the quality of the detainee's testimony, which can represent the difference between winning and losing their case.

Unrepresented detained individuals are more likely to request deportation simply because they cannot fill out a form. All applications must be submitted in English; for non-lawyers, this is a near impossible task to do in one's native language, let alone in a

¹ Presumed Dangerous: Bond Representation and Detention in Baltimore
<https://cliniclegal.org/resources/enforcement-and-detention/presumed-dangerous-bond-representation-and-detention-baltimore>

² Access to Justice: Ensuring Counsel for Immigrants Facing Deportation in the D.C. Metropolitan Area
https://populardemocracy.org/sites/default/files/DC_Access_to_Counsel_rev4_033117%20%281%29.pdf

foreign one. Detained individuals who are not represented have no one to help them fill out the applications in English. The immigration clinic's recent bond observation project witnessed many individuals choose deportation because they could not fill out an application in English and had no legal representation.

The recommendation that a lawyer not be provided for people with any one of a long list of convictions short-circuits due process and is blind to a number of realities in our immigration system. First, many of those facing deportation for convictions are long-time legal permanent residents who have deep ties to our communities and often have U.S. citizen and legal resident families who rely on them. The hardships suffered by these family members reverberate through our communities long after a permanent resident is deported.

Second, the **simple fact of having a lawyer does not guarantee that an immigrant will be able to avoid deportation, but it does give the individual a fair shot.** Immigration judges represent an important – and the appropriate – layer of protection for our communities. An individual with a lawyer has a fair opportunity to present their case to the judge, but the judge still gets to decide whether the person represents a danger to the community and should be deported, or whether factors such as family hardship, the age of a conviction, or evidence of genuine rehabilitation weigh in favor of relief from deportation. **Local governments concerned about due process should not exclude whole classes of people ahead of time from a meaningful chance to present their case to the judge.**

I have known many people in my 30 years in the immigration system who, after being convicted, have paid their debt to society and become beloved and productive members of their families and communities again. A just and equitable legal system, a system concerned about due process of law, will not categorically deny people like these access to justice in a backhanded way by denying them the assistance of a lawyer.

Here are two examples of clients the Clinic has represented **who would be excluded from representation by Montgomery County's proposed list of due process exclusions.** Anna Fritz³ was convicted many years prior of **possession with intent to distribute** because she lived in the house with her abusive, drug-dealing husband. The conviction was so old that DHS chose not to pursue her deportation for it during the Obama Administration. We advised her and helped her apply for naturalization, which was granted. She is now a United States Citizen. She has not had any further contact with the criminal justice system in the decades since her conviction. She would have been deprived of representation under the proposed list of exclusions.

Victor Krow, a legal permanent resident from Liberia, was convicted of **felony assault on a police officer** when he struggled with police who arrested him in the midst of a mental health crisis. At the time of his arrest, he was walking through traffic, talking to himself aloud, and banging on the hoods of people's cars. He was later diagnosed by a physician with a psychiatric disorder. He was a refugee who survived significant trauma in his war-torn home country, where he had no connections and would have been deported. Because he had the benefit of pro bono representation, he was able to remain in the United States

³ Names in this testimony have been changed to ensure confidentiality.

and retain his legal permanent resident status. He also would have been excluded from representation under the proposed exclusion list.

The thing we know makes the biggest difference in fighting back against cruel and senseless anti-immigrant policies is having a lawyer. The need for legal representation in immigration court has never been greater and no one should be excluded from due process. Leave the decision about who is deported to the experts – immigration judges, who can make fair decisions after someone has a fair chance to present their case with the help of a lawyer.